



April 18, 2018

Roxanne Rothschild
Deputy Executive Secretary
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Re: Request for Information Concerning
Representation Case Procedures

To the Members of the National Labor Relations Board:

As General Counsel of the Communications Workers of America, AFL-CIO (CWA), other CWA attorneys and I represent the CWA and employees in matters before the National Labor Relations Board (NLRB). The CWA is a labor organization that represents over 700,000 workers in private and public sector employment in the United States, Canada and Puerto Rico. CWA members work in telecommunications and information technology, the airline industry, news media, broadcast and cable television, education, health care and public service, law enforcement, manufacturing and other fields. The CWA advances and advocates for workers' rights and protections, and for improved wages, benefits, training, and other terms and conditions of employment.

I write to provide information concerning the NLRB's representation case procedures in response to your request. The amendments to the procedures adopted in December 2014 represent modest and common-sense changes in the processing of petitions for an election. They streamline the process, reduce or eliminate unnecessary

litigation, and make it possible for employees seeking to vote on union representation to cast their votes in a more timely manner. Thus, I urge the NLRB to keep the current Election Rule intact without modification. I base that on historical and experiential information, discussed below, which demonstrates that the current Election Rule is successfully meeting its stated goals of streamlining and modernizing processes and procedures to ensure fair and expeditious representation case resolutions.

As you know, the current Election Rule was published in December 2014, and, after facial challenges to the Election Rule were rejected by the courts, it went into effect on April 14, 2015. Some changes implemented when the current Election Rule went into effect, include: electronic filing and transmission of relevant documents; early receipt and posting of more explanatory information regarding the representation case and election process; consistent scheduling of hearings with Regional Director discretion to extend dates; mechanisms to identify issues in dispute and actual questions concerning representation; promptly providing some information on prospective voters and additional information on actual voters; allowing for oral arguments and, in the Regional Director's discretion, briefs; enabling pre-hearing requests for review to be filed after the election; providing for Regional Directors to determine post-election matters before discretionary review by the NLRB; and requiring offers of proof involving charges that block petitions.

In CWA's experience under the current Election Rule:

1. Unnecessary litigation has been reduced and the time required for the NLRB to process representation petitions has been shortened.
2. The rules have been made simpler and easier for union representatives and employees to understand.

3. NLRB practice has been brought more into line with judicial practice, and thus, made participation in representation cases easier for counsel.
4. All parties have been afforded due process.
5. Employer that wished to do so have mounted vigorous campaigns that have effectively conveyed the same types of information using the same methods as was the case prior to the amendments.
6. Employees have been better able to exercise their right to petition and to make a free choice of whether to be represented.
7. As examples of the aforementioned points, I refer to the following:

In CWA District 1, which involves locations in the Northeast, we have been party to more stipulated election agreements, including six involving parking production assistants in Manhattan, and one involving technicians in the Bronx. The two different Regions acted consistently when processing the petitions, including granting employer requests for extensions of time. Further, it was apparent that the NLRB Regions, including hearing officers, are knowledgeable about processing petitions under the current Election Rule, and I would argue that employers, employees and unions are also accustomed to operating under the current Election Rule. No hearings on objections or challenges occurred, and some challenges are being dealt with in bargaining. The shorter time period between filing of the petition and conducting the election has allowed workers to get back to normal more quickly, which is a benefit to all in the workplace.

In CWA District 3, which involves locations in the Southeast, the CWA petitioned for a unit in the matter of *Aircraft Service International, Inc. (Employer) and Communications Workers of America (Petitioner) and Local 74, United Service Workers Union, International*

Union of Journeymen and Allied Trades (Intervenor), 12-RC-187676, which involved encoder operators (baggage handling employees) at the Orlando International airport. The petition was filed on November 4, 2016, a hearing was conducted on November 16, 2016 regarding jurisdictional and contract bar issues, and a decision and direction of election issued on December 27, 2016. Thereafter, an election was promptly conducted, a request for review denied, and the test of cert resolved with the employer extending recognition when it regains business in Orlando.

In CWA District 6, which involves locations in the Southwest, after filing petitions for bargaining units at Century Link and Frontier Communications, the CWA and the aforementioned employers finalized stipulated election agreements. Both elections were smoothly run (one by mail ballot), and the additional voter information for home-based employees was useful.

In CWA District 9, which involves locations on the West Coast, the CWA has challenged fewer voters because of better access to employees through the additional voter information provided, and challenged voters have been addressed in bargaining or UC petitions. Further, the CWA has found that more potential voters are actually casting a ballot.

8. More generally, I note the following:

Currently, while Regions are to schedule elections on the earliest date practicable, Regional Directors have discretion to extend time frames after hearing from both parties and considering all relevant factors, and we have seen evidence of this use of discretion as noted above.

Little has changed regarding representation case processing, other than a decrease in the time period between petition filing and election, and a reduction in the number of charges filed to block an election. Under the current Election Rule, the median number of days between an election petition being filed and the election being held is 23 days instead of 38 days in cases where the parties reach a stipulated election agreement, which is in 92% of the cases - the same percentage as before the current Election Rule was implemented. Thus, the current Election rule has had its desired effect of streamlining the process and allowing employees to vote on a more timely basis.

I recognize that employers have argued that this shortened period between petition filing and election does not give employers enough time to present their case to its workforce regarding unionization, nor employees enough time to make an informed decision about unionization. However, I would note that our experience is that employers have been aware of organizing drives before a petition is filed, thus disproving the notion that employers do not have sufficient time to present their case about unionization to employees, and similarly, that employees are not fully informed before voting. In fact, there has been an uptick in potential voters casting ballots, suggesting that they are better informed since the current Election Rule went into effect. And, in fact, nothing in the current Election Rule prevents employers from communicating with employees regarding unionization. They can, and do, mount vigorous anti-union campaigns just as they did before the Election Rule was implemented.

The shortened time frame between petition filing and election allows for more prompt and efficient resolutions of questions concerning representation with less unnecessary overburdening of NLRB resources. In fact, our above-mentioned experience

reflects that the decrease in the amount of time of uncertainty regarding whether or not employees wish to choose a collective-bargaining representative enables the NLRB to meet its statutory goal of helping to promote stability in the workplace and to allow parties to resolve issues without NLRB involvement, such as with addressing challenges in bargaining.

Further, with regard to the requirement to timely submit a written Statement of Position, which provides detailed information establishing the basis for a hearing on all issues, including eligibility and supervisory issues, I note that these issues are typically superfluous in deciding questions concerning representation, which is the statutory requirement. In fact, even before implementation of the Election Rule, Regional Directors often deferred these issues, the Board almost always deferred them by not ruling on a request for review prior to the election, and the courts of appeals could not reach the issues before an election was conducted. Thus, there was no finality on these issues under the prior election rules.

And, based upon the recent issuance of *PCC Structuralists*, 365 NLRB No. 160 (December 15, 2017), overruling *Specialty Healthcare*, 357 NLRB 934 (2011), the NLRB has given employers much more latitude to contest the appropriateness of the unit, and consequently, it is expected that the time period between petition filing and election will increase. Thus, employers' concerns may become moot, thereby bolstering my position that it is premature to consider any modifications to the current Election Rule, which has not even been in effect for three years.

The current Election Rule also requires that employers provide employee information earlier, including personal contact information shortly after the approval of

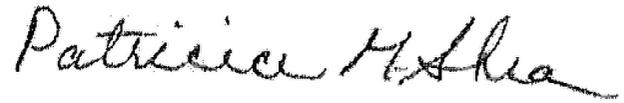
the election or the issuance of a direction of election. Employers have argued that the shortened time frame does not provide for adequate review, and that the disclosure provision violates the privacy rights of employees. I note that, in our experience, employers have had the technology to timely produce lists, and our receipt of employee information early has helped with decreasing the number of voters that we challenge. Further, employers have knowledge of the exact proposed unit, as well as any expanded unit for which they may argue, well before the time that any voter list is due.

Employers have also argued that the early publication requirements can be construed as providing encouragement to employees to unionize. However, I note that the information to be disseminated has a governmental agency seal, which can hardly be mistaken for employer campaign literature, and contains neutral language that it in no way can be viewed to encourage employees to unionize. Further, our experience with more potential voters casting a ballot suggests that they are more fully informed about Board processes and their rights under the statute through these publications. I would expect that earlier dissemination of this sort of information would be met with approval by employers as they profess that their goal in seeking to expand the time frame between petition filing and election is to ensure that employees are educated before voting.

In conclusion, I would argue that the current Election Rule has made the NLRB's rules simpler and easier for employees, union representatives and employer to understand, and has successfully streamlined and modernized processes and procedures, such as requiring electronic filing and other non-controversial, commonplace practices, to ensure fair and expeditious representation case resolutions. It better informs voters and parties of election procedures and of rights and obligations under the statute, allows for more

consistency in case handling, promotes stability in the workplace, and diminishes the need for protracted processing, thus enabling the NLRB to put American taxpayers' dollars to better use. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Patricia M. Shea". The signature is written in black ink and is positioned above the printed name.

Patricia M. Shea

General Counsel